

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PERRY LEE WYSINGER,

Plaintiff,

v.

DEPARTMENT OF VETERANS
AFFAIRS,

Defendant.

CASE NO. C19-5530RBL

ORDER

THIS MATTER is before the Court on Plaintiff Wysinger's Motion for Leave to proceed *in forma pauperis*, supported by his proposed complaint. [Dkt. # 1]. Wysinger is apparently a veteran, and he claims that the VA "took away" a portion of his pension 27 years ago, possibly because of the fact he was also receiving social security payments. He seeks monthly payments of \$669 for 27 years, or \$ 216, 756, plus a small amount for pain and suffering. Wysinger also submits evidence that he already sued on this claim (at least once) in Louisiana (Cause No. 18-cv-00568-TAD) and that that case was dismissed without prejudice for lack of subject jurisdiction.

A district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). The Court has broad

1 discretion in resolving the application, but “the privilege of proceeding *in forma pauperis* in civil
2 actions for damages should be sparingly granted.” *Weller v. Dickson*, 314 F.2d 598, 600 (9th Cir.
3 1963), *cert. denied* 375 U.S. 845 (1963).

4 A person is eligible to proceed *in forma pauperis* if they are unable to pay the costs of
5 filing and still provide the necessities of life. *See Rowland v. Cal. Men's Colony, Unit II Men's*
6 *Advisory Council*, 506 U.S. 194, 203 (1993) (internal quotations omitted). This generally
7 includes incarcerated individuals with no assets and persons who are unemployed and dependent
8 on government assistance. *See, e.g., Ilagan v. McDonald*, 2016 U.S. Dist. LEXIS 79889, at *2
9 (D. Nev. June 16, 2016) (granting petition based on unemployment and zero income); *Reed v.*
10 *Martinez*, 2015 U.S. Dist. LEXIS 80629, at *1, 2015 WL 3821514 (D. Nev. June 19, 2015)
11 (granting petition for incarcerated individual on condition that applicant provides monthly
12 payments towards filing fee). It does not include those whose access to the court system is not
13 blocked by their financial constraints, but rather are in a position of having to weigh the financial
14 constraints pursuing a case imposes. *See Sears, Roebuck & Co. v. Charles W. Sears Real Estate,*
15 *Inc.*, 686 F. Supp. 385, 388 (N.D. N.Y.), *aff'd*, 865 F.2d 22 (2d Cir. 1988) (denying petition to
16 proceed IFP because petitioner and his wife had a combined annual income of between \$34,000
17 and \$37,000).

18 Moreover, a court should “deny leave to proceed *in forma pauperis* at the outset if it
19 appears from the face of the proposed complaint that the action is frivolous or without merit.”
20 *Tripathi v. First Nat'l Bank & Trust*, 821 F.2d 1368, 1369 (9th Cir. 1987) (citations omitted); *see*
21 *also* 28 U.S.C. § 1915(e)(2)(B)(i). An *in forma pauperis* complaint is frivolous if “it ha[s] no
22 arguable substance in law or fact.” *Id.* (citing *Rizzo v. Dawson*, 778 F.2d 527, 529 (9th Cir.
23 1985); *see also Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984).

1 A *pro se* Plaintiff's complaint is to be construed liberally, but like any other complaint it
2 must nevertheless contain factual assertions sufficient to support a facially plausible claim for
3 relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (citing *Bell*
4 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). A
5 claim for relief is facially plausible when "the plaintiff pleads factual content that allows the
6 court to draw the reasonable inference that the defendant is liable for the misconduct alleged."
7 *Iqbal*, 556 U.S. at 678.

8 Ordinarily, the Court will permit *pro se* litigants an opportunity to amend their complaint
9 in order to state a plausible claim. *See United States v. Corinthian Colleges*, 655 F.3d 984, 995
10 (9th Cir. 2011) ("Dismissal without leave to amend is improper unless it is clear, upon *de novo*
11 review, that the complaint could not be saved by any amendment.")

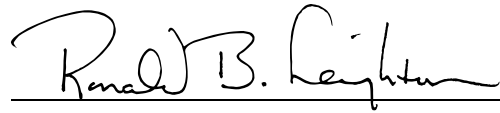
12 Wysinger's proposed complaint does not meet this standard. First, there is no indication
13 that this Court has jurisdiction over the case, or that venue is proper here. Wysinger and the VA
14 office he is attempting to sue are both located in Louisiana, and all the correspondence attached
15 to the complaint, and all the events described, occurred in Louisiana. Second, it appears that
16 most of the claims are time-barred (Wysinger is suing over a decision made almost three decades
17 ago). The basis for his claim that he is entitled to a pension at all is unclear, and it appears that he
18 may have already sued and lost on the claims he seeks to re-assert here.

19 The Motion for Leave to Proceed in *forma pauperis* is therefore DENIED. Wysinger shall
20 pay the filing fee or file a proposed amended complaint within 21 days of this order, or the case
21 will be dismissed. Any such amended complaint should address the legal basis for his claim, the
22 timeliness of his claim, the basis for this Court's jurisdiction over his claim, why this is the
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1 correct location for his claim, and the outcome of any prior lawsuits or administrative processes
2 he has pursued to recover his pension payments.

3 IT IS SO ORDERED.

4 Dated this 21st day of Junem 2019.

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7 Ronald B. Leighton
8 United States District Judge
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